

The Reply Brief of 06/24/2009 has been acknowledged and entered.

Applicant argues that the examiner “presented new arguments, or that arguments presented in a different manner for the first time” in the Examiner's Answer to Appellants' Brief.” Specifically, Applicant argues that “(ii) In the Response to Argument section of the Examiner' s Answer, the Examiner withdrew the "obvious" statement regarding "automatic feature" and changed the scope of the rejection.”

In response to this argument the examiner points out that the Examiner's Answer does not contain “new arguments”.

In the last Office action of 08/07/2008, claims at issue were rejected as following (emphasis added):

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 7, 8, 13, 15, 17, 19, 152, 180-182, 186, 187, 192, 194, 196, 198 and 331 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown, Jr. et al. (US 5,544,036) in view of Woolard et al. (US 6,178,362).

Brown, Jr. et al. (Brown) teaches a computer-implemented method and system for remote energy management and home automation system, said system including a

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central computer 24, a communication device (controller 14), and a communication link (transmitter 20), said method comprising:

Claims 1 and 180,

automatically generating at least one informational message at a central computer responsive to one or more of resource-consumption by, resource-production by, operating characteristics of, and operational state of, of at least one device (C. 4, L. 7-14; Figs. 1, 2; using the computer indicates "automatic" feature. Furthermore, the examiner points out that the "automatic" feature would be obvious since it has been held that broadly providing a mechanical or automatic means to replace manual activity which has accomplished the same result involves only routine skill in the art. In re Venner, 120 USPQ 192);

transmitting the at least one informational message to at least one communication device (controller 14) (C. 4, L. 7-14),

where the at least one communication device (controller 14) initiates at least one action having the effect of providing a change of one or more of resource-consumption by, resource-production by, operating characteristics of, and operational state of one or more of the at least one device of the plurality of remote devices (C. 4, L. 7-18).

Brown does not explicitly teach that said central computer includes a server.

However, the use of a computer as a server is old and well known. For example, Woolard et al. (Woolard) teaches a method and system for remote energy management and home automation system, said system including a central server 60 (Fig. 3), which is configured to be in control communication with peripheral energy consuming devices D (C. 7, L. 37-38, 8-15).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Brown to include that said central computer includes a server, as disclosed in Woolard, because it would advantageously allow to implement said system for multi-building facility, and interconnect various equipment for purposes of control and managing, as specifically stated in Woolard (C. 7, L. 32-35).

In the Examiner's Answer to Appeal Brief of 04/29/2009, the Ground of Rejections was stated as following (emphasis added):

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 7, 8, 13, 15, 17, 19, 152, 180-182, 186, 187, 192, 194, 196, 198 and 331 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown, Jr. et al. (US 5,544,036) in view of Woolard et al. (US 6,178,362).

Brown, Jr. et al. (Brown) teaches a computer-implemented method and system for remote energy management and home automation system, said system including a central computer 24, a communication device (controller 14), and a communication link (transmitter 20), said method comprising:

Claims 1 and 180,

automatically (by the central computer 24) generating at least one informational message at a central computer responsive to one or more of resource-consumption by, resource-production by, operating characteristics of, and operational state of, of at least one device (C. 4, L. 7-18; Figs. 1, 2);

transmitting the at least one informational message to at least one communication device (controller 14) (C. 4, L. 7-14),

where the at least one communication device (controller 14) initiates at least one action having the effect of providing a change of one or more of resource-consumption by, resource-production by, operating characteristics of, and operational state of one or more of the at least one device of the plurality of remote devices (C. 4, L. 7-18).

Brown does not explicitly teach that said central computer includes a server.

However, the use of a computer as a server is old and well known. For example, Woolard et al. (Woolard) teaches a method and system for remote energy management and home automation system, said system including a central server 60 (Fig. 3), which is configured to be in control communication with peripheral energy consuming devices D (C. 7, L. 37-38, 8-15).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Brown to include that said central computer includes a server, as disclosed in Woolard, because it would advantageously allow to implement said system for multi-building facility, and interconnect various equipment for purposes of control and managing, as specifically stated in Woolard (C. 7, L. 32-35).

Realizing that addressing the “automatic” feature in two different ways - first, as being directly taught by the Brown (See: last Office action of 08/07/2008: C. 4, L. 7-14; Figs. 1, 2; using the computer indicates “automatic” feature.), and second, as being obvious feature (See: last Office action of 08/07/2008: *Furthermore, the examiner points out that the “automatic” feature would be obvious since it has been held that broadly providing a mechanical or automatic means to replace manual activity which has accomplished the same result involves only routine skill in the art. In re Venner, 120 USPQ 192*) is confusing, the Examiner withdraws the “obvious” statement regarding said “automatic” feature for clarity of the Examiner’s position, and made a clear statement about this action in the Response to Argument section of the Examiner Answer (10.02, page 7), as following:

(10.02).

In response to Applicant's argument against the "obvious" statement regarding "automatic" feature (Brief, pages 9-10), it is noted that said statement has been withdrawn, thereby making said arguments moot.

Accordingly, the examiner maintains that the Examiner's Answer does not contain "new arguments".

Remaining Applicant's arguments including Claim Rejections under 35 U.S.C. 103(a) have been fully addressed in the Examiner's Answer to Appeal Brief of 04/29/2009.

/Igor N. Borissov/
Primary Examiner, Art Unit 3628
08/03/2009